

REFERENCE TITLE: telecommunication service excise tax; repeal

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

## **SB 1462**

Introduced by  
Senator Martin

### **AN ACT**

AMENDING SECTIONS 15-1306, 36-1947, 41-704, 42-1125, 42-2062 AND 42-5014, ARIZONA REVISED STATUTES; REPEALING TITLE 42, CHAPTER 5, ARTICLE 6, ARIZONA REVISED STATUTES; MAKING APPROPRIATIONS; RELATING TO TELECOMMUNICATION SERVICE EXCISE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1306, Arizona Revised Statutes, is amended to  
3 read:

4 15-1306. Arizona state schools for the deaf and the blind  
5 operating fund

6 A. The Arizona state schools for the deaf and the blind  
7 ~~telecommunications tax~~ OPERATING fund is established consisting of monies  
8 ~~received from the telecommunications tax levied pursuant to section 42-5252,~~  
9 ~~subsection A, paragraph 6~~ APPROPRIATED FROM THE STATE GENERAL FUND. The  
10 Arizona state schools for the deaf and the blind shall administer the fund.

11 B. Monies in the fund shall be used for operating expenses of the  
12 Arizona state schools for the deaf and the blind and are subject to  
13 legislative appropriation.

14 C. Monies in the fund are exempt from the provisions of section 35-190  
15 relating to lapsing of appropriations.

16 Sec. 2. Section 36-1947, Arizona Revised Statutes, is amended to read:

17 36-1947. Telecommunication devices for the deaf and the hearing  
18 and speech impaired; fund

19 A. The commission shall establish and administer a statewide program  
20 to purchase, repair and distribute telecommunication devices to residents of  
21 this state who are deaf or severely hearing or speech impaired and establish  
22 a dual party relay system making all phases of public telephone service  
23 available to persons who are deaf or severely hearing or speech impaired.

24 B. The commission may adopt administrative procedures, rules, criteria  
25 and forms to establish and administer the telecommunication device program  
26 under this section.

27 C. Telecommunication devices furnished by the commission under this  
28 section remain the property of this state. A person who receives a  
29 telecommunication device from the commission under this section is liable for  
30 the loss of or damage to the device. The commission may impose a civil  
31 penalty against the person in an amount equal to the cost of the device or  
32 the amount of damage done to the device. If a person objects to the  
33 imposition of a civil penalty, the commission shall conduct a hearing as  
34 prescribed in title 41, chapter 6, article 10. Monies collected by the  
35 commission under this subsection shall be deposited in the telecommunication  
36 fund for the deaf established by subsection D of this section.

37 D. The telecommunication fund for the deaf is established. The  
38 commission shall administer the fund. Monies in the fund shall ~~be derived~~  
39 ~~from the telecommunication services excise tax levied under section 42-5252,~~  
40 ~~subsection A, paragraph 4~~ CONSIST OF MONIES APPROPRIATED FROM THE STATE  
41 GENERAL FUND. Interest accruing to the fund shall be deposited in the fund.  
42 Monies in the fund are exempt from section 35-190 relating to lapsing of  
43 appropriations. Subject to legislative appropriation, the commission shall  
44 use fund monies to purchase and repair telecommunication devices, to

1 administer the program established by this section and for the operating  
2 costs of the commission.

3 Sec. 3. Section 41-704, Arizona Revised Statutes, is amended to read:

4 41-704. Emergency telecommunication services; administration;  
5 revolving fund

6 A. The director of the department of administration shall:

7 1. Adopt rules and procedures for administering and disbursing monies  
8 deposited in the emergency telecommunication services revolving fund, and at  
9 least quarterly review and approve requests by political subdivisions of this  
10 state for payment for operating emergency telecommunication service systems.

11 2. In fiscal year 2001-2002 and every two years thereafter, recommend  
12 to the legislature the amount of the telecommunication services excise tax  
13 that will be required during the following two fiscal years for purposes of  
14 this section, with supporting documentation and information. The legislature  
15 shall review the recommendation and take legislative action regarding the  
16 recommendation.

17 3. Separately account for costs associated with wireless access  
18 service for emergency telecommunication service systems and report those  
19 costs to the president of the senate and the speaker of the house of  
20 representatives by December 31, 2002.

21 B. An emergency telecommunication services revolving fund is  
22 established to be administered by the director. The fund shall be used for:

23 1. Necessary or appropriate equipment or service for implementing and  
24 operating emergency telecommunication services through political subdivisions  
25 of this state. Priority shall be given to establishing emergency  
26 telecommunication services in those areas of the state that are without  
27 emergency telecommunication services.

28 2. Necessary or appropriate administrative costs or fees for  
29 consultants' services, not to exceed three per cent of the amounts deposited  
30 annually in the revolving fund. For fiscal years beginning after June 30,  
31 2001, the department may use up to two-thirds of the three per cent of the  
32 amounts deposited annually in the revolving fund for administrative costs.  
33 The remainder of the three per cent may be allocated for local network  
34 management of contracts with public safety answering points for emergency  
35 telecommunication services.

36 3. Monthly recurring costs of emergency telecommunication services,  
37 including expenditures for capital, maintenance and operation purposes.

38 4. A wireless carrier's costs associated with the provision,  
39 development, design, construction and maintenance of the wireless emergency  
40 telecommunication services in an amount that the wireless carrier has not  
41 recovered through the deduction mechanism specified in federal law.

42 C. At the end of each fiscal year, any unexpended monies in the fund,  
43 including interest, shall be carried over and do not revert to the general  
44 fund ~~but shall be applied to the extent possible to reduce the levy under~~

~~section 42-5252, subsection A, paragraphs 1, 2 and 3 for the following fiscal year.~~

Sec. 4. Section 42-1125, Arizona Revised Statutes, is amended to read:  
42-1125. Civil penalties: definition

A. If a taxpayer fails to make and file a return for a tax administered pursuant to this article on or before the due date of the return or the due date as extended by the department, then, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, four and one-half per cent of the tax required to be shown on such return shall be added to the tax for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five per cent of the tax found to be remaining due. The penalty so added to the tax is due and payable on notice and demand from the department. For the purpose of computing the penalty imposed under this subsection, the amount required to be shown as tax on a return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return. If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, the penalty described in this subsection shall be applied by substituting such lower amount.

B. If a taxpayer fails or refuses to file a return on notice and demand by the department, the taxpayer shall pay a penalty of twenty-five per cent of the tax, which is due and payable on notice and demand by the department, in addition to any penalty prescribed by subsection A of this section, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. This penalty is payable on notice and demand from the department.

C. If a taxpayer fails or refuses to furnish any information requested in writing by the department, the department may add a penalty of twenty-five per cent of the amount of any deficiency tax assessed by the department concerning the assessment of which the information was required, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

D. If a person fails to pay the amount shown as tax on any return within the time prescribed, a penalty of one-half of one per cent, not to exceed a total of ten per cent, shall be added to the amount shown as tax for each month or fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. If the department determines that the person's failure to pay was due to reasonable cause and not due to wilful neglect and that a payment agreement pursuant to section 42-2057 is appropriate, the department shall not impose the penalty unless the taxpayer fails to comply with the payment agreement. If the taxpayer is also subject to a penalty under subsection A of this section for the same tax period, the total penalties under subsection

A of this section and this subsection shall not exceed twenty-five per cent. For the purpose of computing the penalty imposed under this subsection:

1. The amount shown as tax on a return shall be reduced by the amount of any part of the tax that is paid on or before the beginning of that month and by the amount of any credit against the tax that may be claimed on the return.

2. If the amount shown as tax on a return is greater than the amount required to be shown as tax on that return, the penalty shall be applied by substituting the lower amount.

E. If a person fails to pay any amount required to be shown on any return that is not so shown within twenty-one calendar days after the date of notice and demand, a penalty of one-half of one per cent, not to exceed a total of ten per cent, shall be added to the amount of tax for each month or fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. If the taxpayer is also subject to penalty under subsection A of this section for the same tax period, the total penalties under subsection A of this section and this subsection shall not exceed twenty-five per cent. For the purpose of computing the penalty imposed under this subsection, any amount required to be shown on any return shall be reduced by the amount of any part of the tax that is paid on or before the beginning of that month and by the amount of any credit against the tax that may be claimed on the return.

F. In the case of a deficiency, for which a determination is made of an additional amount due, which is due to negligence but without intent to defraud, the person shall pay a penalty of ten per cent of the amount of the deficiency.

G. If part of a deficiency is due to fraud with intent to evade tax, fifty per cent of the total amount of the tax, in addition to the deficiency, interest and other penalties provided in this section, shall be assessed, collected and paid as if it were a deficiency.

H. If the amount, whether determined by the department or the taxpayer, required to be withheld by the employer pursuant to title 43, chapter 4 is not paid to the department on or before the date prescribed for its remittance, the department may add a penalty of twenty-five per cent of the amount required to be withheld and paid, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

I. A person who, with or without intent to evade any requirement of this article or any lawful administrative rule of the department of revenue under this article, fails to file a return or to supply information required under this article or who, with or without such intent, makes, prepares, renders, signs or verifies a false or fraudulent return or statement or supplies false or fraudulent information shall pay a penalty of not more than one thousand dollars. This penalty shall be recovered by the department of

1 law in the name of this state by an action in any court of competent  
2 jurisdiction.

3 J. If the taxpayer files what purports to be a return of any tax  
4 administered pursuant to this article but which is frivolous or which is made  
5 with the intent to delay or impede the administration of the tax laws, that  
6 person shall pay a penalty of five hundred dollars.

7 K. If a taxpayer who is required to file or provide an information  
8 return under this title or title 43 fails to file the return at the  
9 prescribed time or files a return which fails to show the information  
10 required, that taxpayer shall pay a penalty of five hundred dollars unless it  
11 is shown that the failure is due to reasonable cause and not due to wilful  
12 neglect.

13 L. If it appears to the superior court that proceedings before it have  
14 been instituted or maintained by a taxpayer primarily for delay or that the  
15 taxpayer's position is frivolous or groundless, the court may award damages  
16 in an amount not to exceed one thousand dollars to this state. Damages so  
17 awarded shall be collected as a part of the tax.

18 M. A person who is required under section 43-413 to furnish a  
19 statement to an employee and who wilfully furnishes a false or fraudulent  
20 statement, or who wilfully fails to furnish a statement required by section  
21 43-413, is for each such failure subject to a penalty of fifty dollars.

22 N. A person who is required to collect, truthfully account for and pay  
23 a tax administered pursuant to this article and who wilfully fails to collect  
24 the tax or truthfully account for and pay the tax, or wilfully attempts in  
25 any manner to evade or defeat the tax or its payment, is, in addition to  
26 other penalties provided by law, liable for a penalty equal to the total  
27 amount of the tax evaded, not collected or not accounted for and paid. No  
28 other penalty under this section relating to failure to pay tax may be  
29 imposed for any offense to which this subsection applies.

30 O. Unless due to reasonable cause and not to wilful neglect:

31 1. A person who fails to provide his taxpayer identification number in  
32 any return, statement or other document as required by section 42-1105,  
33 subsection A shall pay a penalty of five dollars for each such failure.

34 2. A person, when filing any return, statement or other document for  
35 compensation on behalf of a taxpayer, who fails to include that person's own  
36 taxpayer identification number and the taxpayer's identification number shall  
37 pay a penalty of fifty dollars for each such failure.

38 3. A person, when filing any return, statement or other document  
39 without compensation on behalf of a taxpayer, who fails to include that  
40 person's own taxpayer identification number and the taxpayer's identification  
41 number is not subject to a penalty.

42 No other penalty under this section may be imposed if the only violation is  
43 failure to provide taxpayer identification numbers.

44 P. If a taxpayer fails to pay the full amount of estimated tax  
45 required by title 43, chapter 5, article 6, a penalty is assessed equal to

the amount of interest that would otherwise accrue under section 42-1123 on the amount not paid for the period of nonpayment, not exceeding ten per cent of the amount not paid. The penalty prescribed by this subsection is in lieu of any other penalty otherwise prescribed by this section and in lieu of interest prescribed by section 42-1123.

Q. The department of law may, with the consent of the department of revenue, compromise any penalty for which it may bring an action under this section.

R. Penalties shall not be assessed under subsection D of this section on additional amounts of tax paid by a taxpayer at the time the taxpayer voluntarily files an amended return. This subsection does not apply if:

1. The taxpayer is under audit by the department.  
2. The amended return was filed on demand or request by the department.

3. The total additional tax paid and due for the tax period represents a substantial understatement of tax liability. For the purposes of this paragraph, there is a substantial understatement of tax for any tax period if the amount of the understatement for the tax period exceeds the greater of ten per cent of the actual tax liability for the tax period or two thousand dollars.

S. For the purposes of this section, and only as applied to the taxes imposed by chapter 5, articles 1 through ~~6~~ 5 and chapter 6, articles 1, 2 and 3 of this title, "reasonable cause" means a reasonable basis for the taxpayer to believe that the tax did not apply to the business activity or the storage, use or consumption of the taxpayer's tangible personal property in this state.

Sec. 5. Section 42-2062, Arizona Revised Statutes, is amended to read:  
42-2062. Abatement of penalties; definition

A. If a taxpayer has been assessed a penalty pursuant to section 42-1107, 42-1125, 43-581 or 43-582, the department, on written application by the taxpayer, shall abate the penalty if it determines that the conduct, or lack of conduct, that caused the penalty to be imposed was due to reasonable cause and not due to wilful neglect.

B. If, before an assessment is issued, a taxpayer applies in writing requesting waiver of a penalty that may be assessed pursuant to section 42-1107, 42-1125, 43-581 or 43-582, the department shall not assess that penalty if it determines that the conduct, or lack of conduct, that would cause the imposition of the penalty was due to reasonable cause and not due to wilful neglect.

C. For the ~~purpose~~ PURPOSES of this section, and only as applied to the taxes imposed by chapter 5, articles 1 through ~~6~~ 5 and chapter 6, article 3 of this title, "reasonable cause" includes situations in which the taxpayer had a reasonable basis to believe that the tax did not apply to the business activity or the storage, use or consumption of the taxpayer's tangible personal property in this state.

Sec. 6. Section 42-5014, Arizona Revised Statutes, is amended to read:  
 42-5014. Return and payment of tax; estimated tax; extensions;  
abatelements

A. Except as provided in subsection B, C or D of this section, the taxes levied under this article are due and payable monthly in the form required by section 42-5018 for the amount of the tax, to the department, on or before the twentieth day of the month next succeeding the month in which the tax accrues and are delinquent:

1. If not postmarked on or before the twenty-fifth day of that month.

2. If not received by the department on or before the business day preceding the last business day of that month for those taxpayers electing to file by mail.

3. If not received by the department on the business day preceding the last business day of that month for those taxpayers electing to file in person.

4. If not received by the department on or before the twenty-fifth day of that month for those taxpayers required or electing to pay in immediately available monies pursuant to section 42-1129.

B. For tax reporting periods that begin from and after December 31, 1998, the department ~~may~~, for any taxpayer whose estimated annual liability for taxes imposed by this article is between five hundred dollars and one thousand two hundred fifty dollars, ~~MAY~~ authorize such taxpayer to pay such taxes on a quarterly basis. For tax reporting periods that begin from and after December 31, 1998, the department ~~may~~, for any taxpayer whose estimated annual liability for taxes imposed by this article is five hundred dollars or less, ~~MAY~~ authorize such taxpayer to pay such taxes on an annual basis.

C. The department may require a taxpayer whose business is of a transient character to file the return and remit the taxes imposed by this article on a daily, a weekly or a transaction by transaction basis, and those returns and payments are due and payable on the date fixed by the department without a grace period otherwise allowed by this section. For ~~THE~~ purposes of this subsection, "business of a transient character" means sales activity by a taxpayer not regularly engaged in selling within the state conducted from vehicles, portable stands, rented spaces, structures or booths, or concessions at fairs, carnivals, circuses, festivals or similar activities for not more than thirty consecutive days.

D. If the business entity under which a taxpayer reports and pays income tax under title 43 has an annual total tax liability under this article, ~~article 6 of this chapter~~ and chapter 6, article 3 of this title of one hundred thousand dollars or more, based on the actual tax liability in the preceding calendar year, regardless of the number of offices at which the taxes imposed by this article, ~~article 6 of this chapter~~ or chapter 6, article 3 of this title are collected, or if the taxpayer can reasonably anticipate such liability in the current year, the taxpayer shall report on a form prescribed by the department and pay an estimated tax payment each



1 June. Any other taxpayer may voluntarily elect to pay the estimated tax  
2 payment pursuant to this subsection. The payment shall be made on or before  
3 June 20 and is delinquent if not postmarked on or before that date or if not  
4 received by the department on or before the business day preceding the last  
5 business day of June for those taxpayers electing to file by mail, or  
6 delinquent if not received by the department on the business day preceding  
7 the last business day of June for those taxpayers electing to file in person.  
8 A taxpayer paying by using the method prescribed in subsection A, paragraph 4  
9 of this section shall make the estimated tax payments on or before June 25,  
10 and the payment is delinquent if not transferred by the last day to make the  
11 estimated payment. The estimated tax paid shall be credited against the  
12 taxpayer's tax liability under this article, ~~article 6 of this chapter~~ and  
13 chapter 6, article 3 of this title for the month of June for the current  
14 calendar year. The estimated tax payment shall equal either:

15 1. One-half of the actual tax liability under this article plus  
16 one-half of any tax liability under ~~article 6 of this chapter and~~ chapter 6,  
17 article 3 of this title for May of the current calendar year.

18 2. The actual tax liability under this article plus any tax liability  
19 under ~~article 6 of this chapter and~~ chapter 6, article 3 of this title for  
20 the first fifteen days of June of the current calendar year.

21 E. The taxpayer shall prepare a return showing the amount of the tax  
22 for which the taxpayer is liable for the preceding month, and shall mail or  
23 deliver the return to the department in the same manner and time as  
24 prescribed for the payment of taxes in subsection A of this section. The  
25 return shall be verified by the oath of the taxpayer or an authorized agent  
26 or as prescribed by the department pursuant to section 42-1105, subsection B.

27 F. Any person WHO IS taxable under this article making AND WHO MAKES  
28 cash and credit sales shall report such cash and credit sales separately and  
29 upon making application may obtain from the department an extension of time  
30 for payment of taxes due on the credit sales. The extension shall be granted  
31 by the department under such rules as the department prescribes. When the  
32 extension is granted, the taxpayer shall thereafter include in each monthly  
33 report all collections made on such credit sales during the month next  
34 preceding, and shall pay the taxes due at the time of filing such report.

35 G. The returns required under this article shall be made upon forms  
36 prescribed by the department.

37 H. The department, for good cause, may extend the time for making any  
38 return required by this article, and may grant such reasonable additional  
39 time within which to make the return as it deems proper, but the time for  
40 filing the return shall not be extended beyond the first day of the third  
41 month next succeeding the regular due date of the return.

42 I. The department, with the approval of the attorney general, may  
43 abate small tax balances if the administration costs exceed the amount of tax  
44 due.

1 J. For the purposes of subsection D of this section, "taxpayer" means  
2 the business entity under which the business reports and pays state income  
3 taxes regardless of the number of offices at which the taxes imposed by this  
4 article, ~~article 6 of this chapter~~ or chapter 6, article 3 of this title are  
5 collected.

6 Sec. 7. Repeal

7 Title 42, chapter 5, article 6, Arizona Revised Statutes, is repealed.

8 Sec. 8. Appropriations; purpose; exemption

9 A. The following sums are appropriated from the state general fund in  
10 fiscal year 2006-2007 for the purposes indicated:

11 1. \$\_\_\_\_\_ to the emergency telecommunication services revolving  
12 fund established by section 41-704, Arizona Revised Statutes, as amended by  
13 this act, for the purpose of financing emergency telecommunication services.

14 2. \$\_\_\_\_\_ to the telecommunication fund for the deaf established  
15 by section 36-1947, Arizona Revised Statutes, as amended by this act, for the  
16 purpose of financing telecommunication devices for the deaf and the severely  
17 hearing and speech impaired program.

18 3. \$\_\_\_\_\_ to the poison control fund administered by the  
19 department of health services for the purpose of financing the Arizona poison  
20 control system.

21 4. \$\_\_\_\_\_ to the Arizona state schools for the deaf and the blind  
22 operating fund established by section 15-1306, Arizona Revised Statutes, as  
23 amended by this act, for the purpose of financing the operating expenses of  
24 the Arizona state schools for the deaf and the blind.

25 5. \$\_\_\_\_\_ to the teratogen information program fund administered  
26 by the university of Arizona health sciences center for the purpose of  
27 financing the teratogen information program at the university of Arizona.

28 B. The appropriations made in subsection A of this section are exempt  
29 from the provisions of section 35-190, Arizona Revised Statutes, relating to  
30 lapsing of appropriations.